IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.17/1984

Smt. Saeeda W/o Mohammad Kayum &
Mohammad Kayum S/o Shri Suleman
…plaintiff-appellant
Versus
1. State of Rajasthan
through Chief Secretary
2. The Collector, Jaipur
3. Union of India
…defendant-respondents

Date of Order ::: 26th July, 2006

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri A.K. Bhandari, Sr. Advocate, with
Shri Ajeet Bhandari with
Shri Rizwan Ahmed for the appellants
Shri G.S. Gill, Additional Advocate General, with
Shri Rajeev Sogarwal for respondents no.1 and 2
None present for respondent no.3 Union of India
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BY THE COURT:-

This appeal under Section 100 of the Code of Civil Procedure has been filed by Smt. Saeeda Wife of Mohammad Kayum and Mohammad Kayum Son of Shri Suleman, against the judgment and decree dated 4th of January, 1984 passed by the Additional District Judge, Court No.4, Jaipur City, Jaipur, in Civil Regular Appeal No.67/81 (229/80), whereby he partly allowed the appeal against the judgment and decree dated 15.11.1980 passed by the Additional Munsiff Magistrate, Jaipur West, Jaipur, in Civil Suit No.229/71, whereby the suit of the plaintiff-appellants was dismissed.

Briefly stated the facts of the second appeal are

that initially sole plaintiff, the appellant no.1, Smt. Saeeda filed a suit for declaration and permanent injunction in the lower court on 26th of March, 1971 wherein it was pleaded that she is a citizen of India and her engagement took place with defendant no.4 Mohammad Kayum in the year 1955 and she was married with him in the year 1964. It was further pleaded in the plaint that on 7th of December, 1961 the Police Station, Manak Chowk, filed a criminal complaint against the defendant no.4 Mohammad Kayum to the effect that he is having Pakistani nationality and came to India vide passport no.422881 dated 17.7.1956 and visa no.9791 dated 5.2.1960, through check-post Barmer on 16.4.1960 (wrongly typed in the plaint as 16.7.1960) and started living with his father at Jaipur. As per term of visa the defendant no.4 ought to have left India on 15.7.1960 but he did not go to Pakistan and continued to reside at Jaipur secretly, therefore, the defendant no.4 committed an offence under Section 7/14 of the Foreigners Act. However he has been acquitted from the aforesaid charge by the Assistant Collector & Magistrate, 1st Class, Court No.2, Jaipur City, Jaipur, vide judgment and order dated 31.5.1962. It was further pleaded in the plaint that some persons had enmity with the plaintiff and her family, therefore, they made false complaint against the defendant no.4 about his being Pakistani nationality and on the said false complaint the CID, Crimes, Rajasthan, started harassing the defendant no.4, the husband of the plaintiff, day-to-day. It was also pleaded that the defendant no.4 was

taken by the police illegally and now the whereabouts of the defendant no.4 are not known, therefore it was prayed that the defendant nos.1 to 3 be restrained from sending the defendant no.4 from the Indian border to Pak border. It was also prayed that the plaintiff as well as the defendant no.4 be declared as citizens of India.

The defendant no.4 (the appellant no.2 herein) Mohammad Kayum filed an application in the lower court on 25th of May, 1971 under Order 1 Rule 10 of the CPC for transposition of his name as plaintiff no.2 in place of defendant no.4. The application was allowed by the lower court on 14th of July, 1971. The amended plaint was filed on 4th of August, 1971 in which Mohammad Kayum was impleaded as plaintiff no.2 in the suit. As per the amended plaint the prayer no.1 was that the plaintiff Mohammad Kayum be declared as citizen of India; and in other prayers it was prayed that the plaintiff may not be deported from India to Pakistan.

Defendant no.3, the Union of India did not appear in spite of service of summons, therefore, ex-parte order was passed against the Union of India.

The defendants no.1 and 2 filed their written statements in the lower court on 9th of October, 1974 wherein it was pleaded that the plaintiff no.2 Mohammad Kayum is a citizen of Pakistan. It was pleaded that after the year 1948 he came first time to India in the year 1960 vide passport no.422881 dated 17.2.1956 and visa no.9791 dated 5.2.1960, on 16.4.1960. His visa was valid only upto

16.7.1960. Filing of criminal case and acquittal of the plaintiff no.2, as mentioned in Para 3 of the plaint was admitted. It was stated that the plaintiff was born in the year 1933. It was also pleaded that the plaintiff no.2 never remained in India during the period from 1948 to 1960.

On the basis of pleadings of the parties the learned lower court framed three issues on 2.1.1975. One additional issue about notice under Section 80 of the CPC was further framed as issue no.4 by the lower court vide order dated 10.7.1980. In support of the case the plaintiff got examined PW-1 Kayum and PW-2 Saeed. The defendants got examined DW-1 Yaduveer Singh. The documentary evidence was also produced by both the parties.

The learned lower court, vide its judgment and decree dated 15.11.1980 decided issue no.1 and 2 both in favour of the defendants and against the plaintiffs. So far as issue regarding notice under Section 80 of the CPC was concerned, the same was decided in favour of the plaintiff. However, in view of the finding on issue no.1 and 2, the suit of the plaintiffs was dismissed. Being aggrieved with the same, a regular first appeal was preferred before the District Judge, Jaipur City, Jaipur which was transferred for disposal to the court of Additional District Judge No.4, Jaipur City, Jaipur, who, vide judgment and decree dated 4.1.1984, partly allowed the appeal. Being aggrieved with the same, the present appeal has been preferred by both the appellants before this Court.

This court vide its order dated 23.1.1984 admitted the present second appeal on the substantial questions of law, as stated in paragraph (A) to (S) of the memo of appeal. The order dated 23.1.1984 passed by this court reads as under:-

> “Heard learned counsel for the appellants.
> The appeal is admitted on the substantial question of law as stated in the paragraph (A) to (S) of the memo of appeal. Issue notice to the respondents.
>
> Sd/-
> Hon’ble the Chief Justice”

The substantial questions of law framed in the memo of appeal in paragraph (A) to (S) are also reproduced as under:-

> “(A) Whether the learned courts below have acted illegally in not applying the provisions of Art.5 of the Constitution when it is not disputed that the appellant No.2 was born in India and full-fills all the conditions of Article 5?
>
> (B) Whether the courts below have acted illegally in holding that the respondent No.2 is not a citizen of India when it has been held that the respondents have failed to prove that the appellant No.2 has come to India from Pakistan?
>
> (C) Whether the learned courts below should have dismissed the suit of the appellants when the respondents have failed to prove the case pleaded by them?
>
> (D) Whether the learned courts below have erred in holding that the burden lies on the appellants to prove that appellant No.2 is citizen of India?

(E) Whether the onus to prove that appellant No.2 does not have domicile in India, was on respondents and whether they have been able to discharge the onus?

(F) Whether the evidence of appellants can be disbelieved merely because it was solitary evidence?

(G) Whether any adverse inference can be drawn for the non-production of document which have not been proved to have existed and the courts have not satisfied itself before drawing adverse inference regarding their existence?

(H) Whether it is incumbent on a Indian Citizen to hold a ration card, rent receipts, from the landlord and to have his name recorded in the voters list when there is no such necessity in law and whether any adverse inference can be drawn for their non-production?

(I) Whether the adverse inference can be drawn for not producing unimportant and immaterial witnesses?

(J) Whether it was incumbent on appellant no.2 to produce evidence regarding the continuous residence in India prior to 1960 when he has been able to prove that he is citizen of India in accordance with Article 5 of the Constitution of India?

(K) Whether the judgment of the learned courts below can be upheld when the first appellate court itself has held that respondents have failed to prove that the appellant no.2 has come to India from Pakistan?

(L) Whether Issue No.1 has been wrongly framed which has caused prejudice to the appellants and the burden and onus lay on respondents to prove that the appellant No.2 was not a citizen of India?

(M) Whether it was incumbent on appellant No.2 to prove his continuous residence in India prior to 1960 when it was not disputed that he was born in India?

(N) Whether appellant was required to lead any evidence regarding the case set up by the respondents in their written statements, when their own witnesses have not proved that case?

(O) Whether the suit against respondent No.3 could have been dismissed when it had not contested the suit and ex parte proceedings were taken against it?

(P) Whether it was incumbent on respondent No.3 to determine the citizenship of appellant No.2 as required under Section 9(2) of the Citizenship Act, 1955?

(Q) Whether courts below have acted illegally in not placing the burden of proof of the change of citizenship of India of appellant No.2 upon the respondents and further in not holding that Respondents having failed to discharge the burden, the appellant No.2 was entitled to the declaration sought by him?

(R) Whether the courts below could have held the appellant No.2 not to be the citizen of India when all their ancestors including the wife and children of appellant No.2 are citizen of India and reside in India couple with the conduct and intention of the appellant?

(S) Whether the courts below could have held the appellant No.2 to be the citizen of India when the criminal case against appellant No.2 under Foreigners Act has been dismissed and it has been found that he was the citizen of India?”

Although the specific substantial questions of law were not framed but all the substantial questions law, as framed in the memo of appeal, were treated as substantial question of law in this case.

Challenging the finding of the courts below, the learned counsel for the appellant contended that in view of

the provisions of Article 5 of the Constitution of India the appellant Mohammad Kayum is a citizen of India as his birth took place in Jaipur and the defendants have also not disputed his birth in Jaipur, therefore, he ought to have been declared as citizen of India. It is further contended that the first appellate court itself observed about so-called visa Exhibit A-4 that the defendants could not prove from Exhibit A-4, the visa, that the plaintiff came in India from Pakistan and in view of this observation of the first appellate court the issue no.1 ought to have been decided in favour of the appellant. He contended that the first appellate court wrongly decided issue no.1 after aforesaid observation by saying that the plaintiff is required to prove his own case and cannot be allowed to take the benefit of weakness of the evidence of the defendants. He further contended that both the courts below were wrong in not deciding the issue no.1 in favour of the plaintiff no.2 on the basis of the statement of PW-1 alone. His contention is that the observations of both the courts below that in absence of corroborating evidence, the statement of PW-1 Mohammad Kayum cannot be made basis for deciding issue no.1 about his nationality in his favour, is not correct. The learned counsel further contended that the courts below committed an illegality in putting burden of issue no.1 on the plaintiff whereas as per the written statement of the defendants to the effect that the plaintiff no.2 did not remain in India from 1948 to 1960, the burden to prove it ought to have been placed on the

defendants. The learned counsel further contended that the courts below committed serious illegality in drawing adverse inference against the plaintiff for not filing ration card, voter-list, not examining his father as his witness, etc. He contended that it was not proved from the record that the plaintiff was having ration-card and voter-list in his possession and still he did not produce. He contended that unless the court is satisfied about the existence of the document, an adverse inference cannot be drawn for not producing the said documents/evidence. He also contended that there was no specific denial of contents of Para no.1 of the plaint that the plaintiff Mohammad Kayum is a resident of Jaipur and in absence of specific denial, it ought to have been presumed that the contents of Para no.1 of the plaint were admitted.

Learned counsel for the appellant, in support of his contention, placed reliance on the following decisions:-

1. AIR 1966 SC 160 – Kedar Pandey v. Narain Bikram;

2. AIR 1963 Allahabad 260 – Abida Khatoon Vs. State of U.P.;

3. AIR 1983 SC 126 – Maqsoodan Vs. State of U.P.;

4. AIR 1989 SC 236 – Vahula Bhusan @ Vehuna Krishnan v. State of Tamil Nadu;

5. (1991) 1 SCC 343 – Bhoolchand v. Kay

Pee Cee Investments;

6. 1974 RLW 13 – Union of India v. Teckchand.

Shri G.S. Gill, the learned Additional Advocate General for the respondent nos.1 and 2 contended that there is no merit in any of the contentions urged by the learned counsel for the appellant. He contended that the issue no.1 “whether the plaintiff Mohammad Kayum is a citizen of India or not” is purely a question of fact and both the courts below have decided this issue against the appellant, therefore, this court should not interfere in the finding of fact recorded by both the courts below. He referred the decision of the Andhra Pradesh High Court in Mohammad Naseeruddin v. State of Andhra Pradesh, Hyderabad (AIR 1960 Andhra Pradesh 106). He further contended that after 1948 the appellant Mohammad Kayum came to India for the first time on the basis of visa Exhibit A-4 for three months and he was required to go back but he did not go there, therefore, it became necessary to pass his deportation order from India.

Lastly he referred the decision of the Hon’ble Supreme Court in State of U.P. Vs. Shah Mohammad (AIR 1969 SC 1234) and contended that the civil court had not jurisdiction to entertain and try the suit in view of sub-section (2) of Section 9 of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules, 1956.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the

impugned judgments as well as the record of both the courts below.

In Kedar Pandey’s case (supra) the Hon’ble Supreme Court, in Para 10 of the judgment, held as under:-

> “The law on the topic is well-established but the difficulty is found in its application to varying combination of circumstances in each case. The law attributes to every person at birth a domicile which is called a domicile of origin. This domicile may be changed, and a new domicile, which is called a domicile of choice, acquired; but the two kinds of domicile differ in one respect. The domicile of origin is received by operation of law at birth; the domicile of choice is acquired later by the actual removal of an individual to another country accompanied by his animus manendi. The domicile of origin is determined by the domicile, at the time of the child’s birth, of that person upon whom he is legally dependent. A legitimate child born in a wedlock to a living father receives the domicile of the father at the time of the birth; a posthumous legitimate child receives that of the mother at that time..... It is also well established that the onus of proving that a domicile has been chosen in substitution for the domicile of origin lies upon those who assert that the domicile of origin has been lost. The domicile of origin continues unless a

> fixed and settled intention of abandoning the first domicile and acquiring another as the sole domicile is clearly shown..."

In Abida Khatoon's case (supra), a Single Bench of the Allahabad High Court held as under:-

> *"Ordinarily, it is for the plaintiff to prove the facts on which his prayer for relief is based. But where the plaintiffs claim that they are citizens of India, whereas the State alleges that they are citizens of Pakistan, and the plaintiffs are able to prove that they were citizens of India when they left for Pakistan, there will be a presumption that they continued to be citizens when they returned Citizenship does not evaporate with the passing of time; it clings to a person wherever he may roam. It cannot be taken away from him unless he voluntarily renounces it or is guilty of some conduct involving loss of citizenship. The onus of proving that a citizen of India has lost his citizenship is on the party seeking to deprive him of his rights as a citizen."*

In Maqsoodan's case (supra) the Hon'ble Supreme

Court, in Para 6 of the judgment, observed that – "*It is not the number of witnesses examined nor the quantity of evidence adduced by the prosecution that counts. It is the quality that counts*."

In Vahula Bhushan @ Vehuna Krishnan's case (supra) the Hon'ble Supreme Court observed that on the basis of sole witness conviction can be based on his testimony.

The counsel for the appellant has referred this judgment in support of his submission that both the courts below in the present case did not decide issue no.1 only on the basis of statement of PW-1 Kayum for want of its corroboration. On the basis of this judgment, the learned counsel for the appellant, contended that issue no.1 ought to have been decided in his favour on the basis of sole testimony of PW-1 Kayum as his statement was cogent and trustworthy in the facts and circumstances of the present case.

In Bhoolchand's case (supra) the Hon'ble Supreme Court observed that before drawing an adverse inference for non-production of document, the existence of the document and its possession with the party must be established. Similarly in the case of Union of India v. Teckchand (supra) this court observed that before adverse inference can be drawn there must be some evidence on point on which adverse inference is desired to be drawn. Where party gives notice for production of original, he should give secondary evidence and in absence of it, no presumption can be drawn.

Learned counsel for the appellant, on the basis of

these decisions, contended that both the courts below have committed an error in drawing an inference against the plaintiff-appellant for not producing his ration-card, rent receipts from the landlord and voter-list to show his name therein and as proof of his residence, in absence of any specific evidence that the plaintiff was in possession of these documents.

In Mohammad Naseeruddin’s case (supra), the Division Bench of the Andhra Pradesh High Court held that the question whether a person is a citizen of a country or not, is a question of fact.

The learned Additional Advocate General, on the basis of this judgment, contended that issue no.1, in the present case, was purely a question of fact and there is concurrent finding by both the courts below in this regard and no interference therein should be made in this second appeal.

In the case of State of U.P. Vs. Shah Mohammad (supra) the Hon’ble Supreme Court held that the High Court should not have called the lower appellate court for a decision on the question whether the plaintiff had or not acquired the citizenship of Pakistan during his stay there, but should have ordered the determination of the question by the Central Government.

So far as the objection raised on behalf of the respondents no.1 and 2 about interference by this court in second appeal, in view of the concurrent finding in respect of issue no.1, which is purely a question of fact, is

concerned, it is relevant to mention that this court, in its order dated 23.1.1984, admitted the appeal on the substantial questions of law as stated in Paragraph (A) to (S) of the memo of appeal as reproduced above. Once an appeal is admitted then normally it is heard on the questions formulated by the court at the time of admission, therefore, this second appeal cannot be dismissed summarily at this stage, as contended by learned Additional Advocate General.

During the course of arguments neither the counsel for the appellant, nor the counsel for the respondents argued their cases question-wise but they confined their arguments, which have been referred herein above.

In the present case the plaintiff has come with a case that he is a citizen of India as he was born at Jaipur and residing in Nalla Neelgaran, Chowkri Ramchanderji, Jaipur. His father Suleman and his ancestors are also residing in India and they all are citizens of India since the date, the Constitution of India came into force. The defendants, in their written statements, have denied the contents of Para 1 of the plaint. In Para 4 of the written statements, the year of birth of the plaintiff Mohammad Kayum was admitted as of the year 1933. In Para 10 of the written statements it was pleaded that the plaintiff no.2 Mohammad Kayum is having Pakistani nationality and he did not reside in India during the period from 1948 to 1960. He came to India only for three months, therefore, he has no right to reside in India.

The plaintiff has produced Exhibit-1, the certified copy of the judgment dated 7.12.1961 in criminal case no.395/61, whereby the Assistant Collector & Magistrate, 1st Class, Court No.2, Jaipur City, Jaipur, acquitted the appellant Mohammad Kayum from the charge under Section 7/14 of the Foreigners Act. It was mentioned in the judgment Exhibit-1 that the accused Mohammad Kayum examined two witnesses, namely, Gulab and Ahmad Bux, who stated before the criminal court that Mohammad Kayum never went to Pakistan and since 1947 he is residing in India itself. Both the witnesses were his neighbours. The learned Magistrate observed that a challan was filed only on the basis of residential permit and one another report but the documentary evidence was not taken in custody and the same have not been produced in support of the complaint. The learned criminal court also observed that even the passport and visa of the accused Mohammad Kayum have not been placed on the record in support of the complaint filed by the prosecution, therefore, there is no evidence to show that the accused is a citizen of Pakistan and he came to India after obtaining visa. The criminal court gave the benefit of doubt and acquitted the accused Mohammad Kayum.

On the other hand, the defendant nos.1 and 2 have placed on the record a copy of the residential permit Exhibit A-1, particulars of national of the appellant Mohammad Kayum Exhibit A-2, temporary residential permit Exhibit A-3 and visa of appellant Mohammad Kayum Exhibit A-4. According to the plaintiff the said visa Exhibit A-4

does not belong to him. He has even denied his photo on it whereas the defendants rely upon it and contends that the appellant Mohammad Kayum came to India after obtaining visa Exhibit A-4, from Pakistan.

After considering the submissions of the learned counsel for both the parties and also the substantial questions of law as formulated in the memo of appeal I find that in addition to issue no.1, one another issue “Whether the appellant Mohammad Kayum remained in Pakistan during the period from 1948 to 1960?”, was also necessary to be framed by the lower court and burden to prove it, ought to have been placed on defendants as per the judgments of the Hon’ble Supreme Court, referred herein above.

However, an additional substantial question of law, which further emerges in the present case, is about jurisdiction of the civil court after coming into force of the Citizenship Act, 1955 as in the present case birth of the appellant Mohammad Kayum in Jaipur in the year 1933 is not disputed but as per visa Exhibit A-4 he migrated to Pakistan in 1948 and remained there upto 1960 and after obtaining passport and visa from Pakistan came in India in 1960. Whether he acquired the citizenship of another country or not, is a question which is required to be decided in the present case. As per sub-section (2) of Section 9 of the Citizenship Act, 1955, read with Rule 30 of the Citizenships Rules, 1956, the said question can exclusively be tried by the Central Government, therefore, in my opinion, following substantial question of law is

also involved in this second appeal:-

> *Whether, in the facts and circumstances of this case, the Civil Court has jurisdiction to entertain and decide the suit or the Central Government has exclusive jurisdiction to entertain and decide the present dispute in view of sub-section (2) of Section 9 of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules, 1956?*

For ready reference, Article 5 of the Constitution of India, Section 9 of the Citizenship Act, 1955 and Rule 30 of the Citizenship Rules, 1956, are reproduced as under:-

Article – 5 of the Constitution

> "5.Citizenship at the commencement of the Constitution.- At the commencement of this Constitution every person who has his domicile in the territory of India and –
>
> (c)who was born in the territory of India; or
> (d)either of whose parents was born in the territory of India; or
> (e)who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,
>
> shall be a citizen of India."

Section 9 of the Citizenship Act, 1955:-

> "9. Termination of citizenship.-
>
> **(1)** Any citizen of India who by naturalization, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement

of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any (citizen of India) has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

Rule 30 of the Citizenship Rules, 1956:-

"30. Authority to determine acquisition of citizenship of another country.- (1) if any question arises as to whether, when or how any person had acquired the citizenship of another country, the authority to determine such question shall, for the purpose of section 9(2), be the Central Government.

> (2) The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III.”

In the case of State of U.P. Vs. Shah Mohammad (AIR 1969 SC 1234) their Lordships of the Hon'ble Supreme Court held that the questions falling within Section 9 (2) of the Citizenship Act, 1955 have to be determined to the extent indicated therein by the Central Government and not by the Courts.

In the case of State of U.P. v. Mohammad Din (AIR 1984 SC 1714), the Hon'ble Supreme Court relied upon its earlier decision in the case of State of U.P. Vs. Shah Mohammad (supra) and held that the civil court will have no jurisdiction to decide the issue arising in a suit instituted before the commencement of the Citizenship Act, 1955 as the Central Government alone has been constituted as exclusive forum for the same.

So far as the present case is concerned, the suit had been instituted after coming into force of Section 9 (2) of the Citizenship Act, 1955.

The Hon'ble Apex Court in State of U.P. v. Mohammad Din (supra) has held as under:-

> “7. In shah Mohammad's case (AIR 1969 SC 1234), this Court specifically overruled the decision in Abida Khatoon's case. This Court specifically held that from the amplitude of the language employed in

> Section 9, the legislative intention has been made clear that all cases which come up for determination where an Indian citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the Constitution, that is after January 26, 1950 and before the commencement of the Act i.e. December 30th, 1955 have to be dealt with and decided in accordance with the provisions contained in Section 9 (2) of the Act. This Court specifically held that Civil Court will have no jurisdiction to decide the issue arising in a suit instituted before the commencement of the Act as the Central Government alone has been constituted the exclusive forum for the same. This legal position is unquestioned and unquestionable. Therefore the decision of the High Court is wholly unsustainable, and both the appeals will have to be allowed."

In Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi (AIR 1986 SC 1534) the Hon'ble Supreme Court held that "for the purpose of deciding the question arising under S.9 (1) of that Act, the Central Government by virtue of the power conferred on it by S.9 (2) has been given an

exclusive power to determine in accordance with the Rules of evidence provided for the purpose whether a person has acquired the citizenship of another country.” It has been further held that “Section 9 of the Citizenship Act, 1955 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country.” Therein it has been further held that “The policy behind S.9 (2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other Court or authority would have to act only on the basis of the decision of the prescribed authority in that behalf and on no other basis.”

That by virtue of the provisions of Section 9 (2) and 18 (2)(h) of the Citizenship Act, 1955 and the Rule 30 and Schedule III of the Citizenship Rules, 1956, the Central Government alone is constituted as the authority to decide the question of voluntary acquisition of citizenship of a foreign country and consequent determination of the citizenship of India. No other court or authority has the power to decide the question as to whether, when or how an Indian citizen has acquired the citizenship of another country.

In view of the above provisions of law as well as law laid down by Hon'ble the Supreme Court that the civil court has got no jurisdiction to entertain and decide the

question about citizenship of a person, the decision on the questions formulated in the memo of appeal, on which the appeal was admitted, becomes irrelevant and unnecessary, and this appeal is being disposed of on the question relating to jurisdiction of civil court only as formulated above and the same is decided by holding that the lower court and appellate court had no jurisdiction to entertain and decide the present suit in view of the decisions of the Hon'ble Supreme Court in the cases of State of U.P. Vs. Shah Mohammad (supra), State of U.P. Vs. Mohammad Din (supra) and Bhagwati Prasad Dixit Vs. Rajeev Gandhi (supra), as referred above.

Consequently I do not find any merit in any of the contentions of the learned counsel for the appellants and the same are rejected. However in view of my above finding that the civil court has no jurisdiction to entertain and try the suit relating to declaration of citizenship of a person, I find that the judgments and decrees passed by both the courts below are liable to be set aside being without jurisdiction and the plaint of the plaintiff-appellants is liable to be dismissed being not maintainable in civil court.

In the result, the present second appeal is disposed of. The judgments and decrees passed by both the courts below are set aside and the suit of the plaintiff-appellants is dismissed as not maintainable. No order as to costs.

The appellants are granted three months time to

approach the Central Government, if they so desire, and they shall not be deported from India for a period of three months from today.

(Narendra Kumar Jain) J.

//Jaiman//